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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/906,753	07/18/2001	Lionel Breton	016800-455	6600

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EXAMINER	
MELLER, MICHAEL V	
ART UNIT	**PAPER NUMBER**
1654	

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/906,753	BRETON ET AL.	
	Examiner	Art Unit	
	Michael V. Meller	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 November 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-46* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-9, 11-13, 15-16, 18-34, 36-42, 44-46 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 410007545 or JP 09030954.

The references teach that an extract of Iris pallida is administered topically to the skin for treating skin ailments.

Applicants argue that JP '545 teaches reducing wrinkles and/or fine wrinkles and used for relaxing and/or softening skin and/or subcutaneous tissues. While this is noted it is also noted that if one treats the wrinkles one also will stimulate the immune defenses of an individual via the skin, stimulate photoinduced aging-weakened immune defenses, protect the langerhaus cells in the skin from UV irradiation, and protect the skin against photo-induced aging inherently.

JP '954 is argued to be taught for sunburn treatment which is also true, but once again if you treat the skin you will treat the other ailments inherently as noted above.

Claims 1-46 are rejected under 35 U.S.C. 102(b or e) as being anticipated by Breton et al. '574 or Breton et al. '850.

The references teach that an extract of Iris pallida is administered topically or orally to the skin for treating skin ailments. Applicant in claims 18-20 show that they are using more than just one "active ingredient" in their composition. The specification is clear that the many different additives/agents are also added to the composition for use.

Applicants argue that Breton '574 does not teach their claimed methods of use, but if one applies the composition containing the extract to the skin the claimed uses will be inherently performed. While this is noted it is also noted that if one treats the wrinkles one also will stimulate the immune defenses of an individual via the skin, stimulate photoinduced aging-weakened immune defenses, protect the langerhaus cells in the skin from UV irradiation, and protect the skin against photo-induced aging inherently.

The arguments used for JP '545 are also applicable to Breton '850 since they are one and the same thus the rebuttal is the same as above.

Claims 1-9, 11, 21, 22, 28, 31-33, 36, 38, 39-41, 44, 46 are rejected under 35 U.S.C. 102(b or e) as being anticipated by JP 10158186 or Maignan.

The references teach that an extract of Iris pallida is administered topically to the skin for treating skin ailments.

As stated above for the other references, the same extract in JP '186 is being applied to the skin for a specific reason. When the extract is applied to the skin for treating arthritis this in and of itself will stimulate the immune defenses since the arthritis will be treated and immunity would increase.

In Maignan, it is taught that the extract promotes skin exfoliation and stimulating epidermal regeneration. If the epidermis is regenerated then the immune defenses are stimulated since the skin is part of the immune defenses. Part of the body's immunity is warding off illnesses which is what the skin does.

Claims 1-11, 21, 22, 28, 31-33, 36, 38-41, 44, 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Breton et al '257.

The references teach that an extract of Iris pallida is administered topically or orally to the skin for treating skin ailments. Applicant in claims 18-20 show that they are using more than just one "active ingredient" in their composition. The specification is clear that the many different additives/agents are also added to the composition for use.

Once again applicant states that the reference does not teach the claimed invention. Applicant says that the specific language used in the claims is not met. The reference teaches that the extract is applied to the skin or taken orally and for a immunological disorder, see claim 3. Also if one takes it for these reasons the other uses of the claimed invention would also happen inherently.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10158186 or Maignan taken with Breton et al. '850 or Breton et al. '574.

JP and Maignan teach the claimed invention as noted above but they don't teach the amounts of plant extract to be used, or oral administration.

It would have been obvious to use the claimed amounts of extract and to orally administer the extract since the Breton references make it clear that such amounts and

administration is well known to one of ordinary skill in the art and that such amounts and administration achieves desirable results.

Applicants argue that the references do not teach using the plant extract for their claimed purposes. JP and Maignan teach that the extracts are known to be used to treat arthritis and to promote skin regeneration and exfoliation, thus the immune defenses will be increase (stimulated) since treating the arthritis will help the immunity increase because now the pain is reduced which helps the body increase it defenses which is what the immunity is. If you promote the skin regeneration you are helping the skin's immunity and the bodies immunity because the skin protects the body which builds up its immunity to external things affecting the body.

Claims 1-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 09030954 or JP 410007545 taken with Breton et al. '850 or Breton et al. '574.

The JPs teach the claimed invention as noted above but they don't teach oral administration.

It would have been obvious to orally administer the extract since the Breton references make it clear that such administration is well known to one of ordinary skill in the art and that such administration achieves desirable results.

Applicant presents the same arguments as above about the references, thus the rebuttal is the same.

Claims 1-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breton et al. '257 taken with Breton et al. '850 or Breton et al. '574.

Breton teaches the claimed invention as noted above but it doesn't teach the amounts of plant extract to be used.

It would have been obvious to use the claimed amounts of extract since the Breton references make it clear that such amounts are well known to one of ordinary skill in the art and that such amounts and administration achieves desirable results.

Applicant presents the same arguments as above about the references, thus the rebuttal is the same.

Claims 1-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breton et al. '850 or Breton et al. '574.

The Breton references teach the claimed invention as noted above.

It would have been obvious to administer the compositions in the forms known in the art in terms of oral and topical administration and with additives described in the art. The use of specific administrations and additives is merely the choice of the artisan.

Applicant presents the same arguments as above about the references, thus the rebuttal is the same.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 571-272-0967. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 571-272-0961. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael V. Meller
Primary Examiner
Art Unit 1654

MVM